

ATTACHMENT 4

PLAINTIFF'S NOTICE OF FILING IN SUPPORT OF MEMORANDUM OF LAW ON POST-TRIAL MOTIONS

From: [Shane Vogt](#)
To: [Katarina Resar Krasulova](#); [Rakoff NYSD Chambers](#); [Ken Turkel](#); [schulzd@ballardspahr.com](#); [brownjay@ballardspahr.com](#); [O'Laughlin, Andy](#); [axelrodd@ballardspahr.com](#); [Ellsworth, Felicia H](#); [schellj@ballardspahr.com](#); [Gayla Arnold](#)
Cc: [David Hayes](#)
Subject: RE: Palin v. The New York Times Company, 17-cv-04853 [Preliminary Jury Instruction]
Date: Monday, April 14, 2025 8:25:00 PM
Attachments: [2025.04.14. Palin Preliminary Instruction as of 5 50 pm \[Revised Final\].pdf](#)
[2025.04.14. Palin Preliminary Instruction as of 5 50 pm \[clean\].docx](#)
[Plaintiff Objection to 4-14-2025 Preliminary Instruction.pdf](#)

Attached are Plaintiff's suggested edits (redline and clean versions) and Objection to the latest draft of the Preliminary Instruction.

From: Katarina Resar Krasulova <Katarina_Krasulova@nysd.uscourts.gov>
Sent: Monday, April 14, 2025 5:54 PM
To: Rakoff NYSD Chambers <RakoffNYSDChambers@nysd.uscourts.gov>; Ken Turkel <kturkel@tcb-law.com>; Shane Vogt <svogt@tcb-law.com>; schulzd@ballardspahr.com; brownjay@ballardspahr.com; O'Laughlin, Andy <Andy.OLaughlin@wilmerhale.com>; axelrodd@ballardspahr.com; Ellsworth, Felicia H <Felicia.Ellsworth@wilmerhale.com>; schellj@ballardspahr.com; Gayla Arnold <garnold@tcb-law.com>
Subject: Palin v. The New York Times Company, 17-cv-04853 [Preliminary Jury Instruction]

Counsel,

Attached is Judge Rakoff's latest draft of the preliminary instruction. While all objections previously stated on the record are hereby preserved, any further objections or suggested edits should be emailed to the undersigned by no later than 8:30 p.m. tonight.

The Judge will give his final rulings on any such objections or suggestions at 9 a.m. tomorrow but will not hear any further argument.

Best,

Katarina
Katarina Resar Krasulova
Law Clerk to the Hon. Jed S. Rakoff
United States District Court
Southern District of New York
[500 Pearl Street – Room 1340](#)
[New York, NY 10007](#)
Chambers: (212) 805-0401

Sarah Palin

-v-

17-cv-4853 (JSR)

**The New York Times Co. & James
Bennet**

PRELIMINARY INSTRUCTION

To the jury:

Before we hear counsel's opening statements and begin to hear the evidence, I would like to give you a brief overview of this case and focus your attention on some of the main factual debates that you will be asked to resolve. After you have heard all the evidence and the parties have made their closing arguments, I will give you detailed instructions of law that will displace these preliminary comments and will govern your deliberations. But for now, it may be useful to give you a quick overview that may help focus your evaluation of the evidence.

This is an action for libel, also commonly referred to as defamation. A libel is a false statement, in writing, about the plaintiff that tends to expose the plaintiff to public contempt, aversion, ridicule or disgrace. The plaintiff here is Sarah Palin, the former governor of Alaska and a former vice- presidential candidate. One of the defendants, The New York Times Company, is a media company that publishes *The New York Times* newspaper. The other defendant, James Bennet, is a journalist who at most of the times relevant to this case was the Editor of the Opinion Section of *The New York Times*.

Back on January 8, 2011, a man named Jared Loughner attacked a political event in Tucson, Arizona hosted by Democratic Congressperson Gabrielle Giffords, killing six persons and severely wounding 13 others, including Congressperson Giffords. More than six years later, on June 14, 2017, a man named James Hodgkinson attacked a group of Republican members of Congress practicing for an annual Congressional baseball game in Arlington, Virginia, shooting and severely injuring four people including Congressperson Steve Scalise. Later that same day, members of *The New York Times* Opinion staff drafted an editorial entitled "America's Lethal Politics," that was published in the newspaper's on-line edition late that evening and in the newspaper's print edition the following morning. It is this editorial that contained the statements that Ms. Palin claims

libeled her.

The full editorial, which the parties have stipulated will be introduced in evidence, is attached hereto as Exhibit A. However, the portions of which Ms. Palin complains appeared in two paragraphs that read:

"In 2011, when Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 9-year-old girl, the link to political incitement was clear. Before the shooting, Sarah Palin's political action committee circulated a map of targeted electoral districts that put Ms. Giffords and 19 other Democrats under stylized cross hairs.

Conservatives and right-wing media were quick on Wednesday to demand forceful condemnation of hate speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask for the right."

Co-defendant Bennet was principally responsible for the words in these paragraphs that Ms. Palin claims libeled her.

Around 11:15 a.m. on June 15, 2017, the *Times* published a revised digital version of the editorial and added a correction to the end of it that read:

"Correction: June 15, 2017

An earlier version of this editorial incorrectly stated that a link existed between political incitement and the 2011 shooting of Representative Gabby Giffords. In fact, no such link was established."

Later, on June 16, 2017, the *Times* also published a correction at the bottom of the Editorial Page in the printed edition that read:

"CORRECTION

An editorial on Thursday about the shooting of Representative Steve Scalise incorrectly stated that a link existed between political rhetoric and the 2011 shooting of Representative Gabby Giffords. In fact, no

such link was established. The editorial also incorrectly described a map distributed by a political action committee before that shooting. It depicted electoral districts, not individual Democratic lawmakers, beneath stylized cross hairs."

The assertion that there was a "direct" and "clear" "link" between the crosshairs map and the Loughner shooting is defamatory as a matter of law, but you will still have to decide whether the assertion is false and reasonably understood to refer to Ms. Palin personally.

In addition, Ms. Palin needs to prove certain other elements of her claim, such as what the law calls "actual malice." To prove this essential element of her claim, Ms. Palin would have to show that it was highly probable that at the time he drafted the relevant parts of the editorial, Mr. Bennet actually knew that the complained-of assertion was false or knew that there was a high risk that the assertion was false but intentionally chose to disregard that risk.

The issues outlined above are not the only disputed issues in this case; but they are issues that are likely to be subject of much of the evidence and argument that you are about to hear, and that is why I wanted to focus your attention on it from the outset. But please remember that this Preliminary Instruction is simply a brief and partial overview. At the start of your deliberations, I will give you more complete and detailed instructions that will replace this overview and will govern your deliberations.

Judge Rakoff

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THURSDAY, JUNE 15, 2017

Opinion

IbneNew Yorklimes

EDITORIALS

America's Lethal Politics

America's elected representatives enjoying America's pastime on a ball field just across the Potomac from the Capitol. A particularly American form of terror changed that idyllic early Wednesday morning into what Senator Rand Paul, who was there, called "basically a killing field."

A gunman with a rifle fired dozens of rounds at members of Congress and current and former aides, who dove for cover. "He was hunting us," said Representative Mike Bishop, Republican of Michigan, who was at home plate when the gunman appeared. In all, five victims were hit, including Representative Steve Scalise of Louisiana, the House majority whip, who was in critical condition. Wednesday night, after surgery on a bullet

Asickening pattern emerges in the assault on members of Congress at a ball field.

wound to his hip.

An American would once have been horrified and shocked by such savagery. An American today would be right to be horrified -- and not very surprised. This was one of two mass shootings in the United States on Wednesday. At a San

Francisco UPS facility, a gunman killed three people and himself.

Not all the details are known yet about what happened in Virginia, but a sickeningly familiar pattern is emerging in the assault. The sniper, James Hodgkinson, who was killed by Capitol Police officers, was surely deranged, and his derangement had found its fuel in politics. Mr. Hodgkinson was a Bernie Sanders supporter and campaign volunteer virulently opposed to President Trump. He posted many anti-Trump messages on social media, including one in March that said "Time to Destroy Trump & Co."

Was this attack evidence of how vicious American politics has become? Probably. In 2011, when Jared Lee Loughner opened fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 9-year-old girl, the link to political incitement was clear. Before the shooting, Sarah Palin's political action committee circulated a map of targeted electoral districts that put Ms. Giffords and 19 other Democrats under stylized cross hairs.

Conservatives and right-wing media were quick on Wednesday to demand forceful condemnation of hate

speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask of the right.

Was this attack evidence of how readily available guns and ammunition are in the United States? Indisputably. Mr. Hodgkinson, by definition, should not have had a gun, but he was licensed in his home state, Illinois. And in any event it would have been easy for him to acquire a weapon in Virginia, which requires no background checks in private sales, requires no registration for most weapons and has few restrictions on open carry.

The reaction of some was that the only solution is yet

more guns. Representative Mo Brooks of Alabama, who was among those who came under fire on Wednesday, said "It's not easy to take when you see people around you being shot and you don't have a weapon yourself."

That's an entirely reasonable reflex. All people in that situation, unarmed and under fire, would long to be able to protect themselves and their friends. Yet consider the soci-

ety. Americans would have to live in - the choices they would all have to make - to enable that kind of defense. Every member of Congress, and every other American of whatever age, would have to go to baseball practice, or to school, or to work, or to the post office, or to the health clinic - or to any of the other places mass shootings now take place - with a gun on their hip. And then, when an attack came and they returned fire, they would probably kill or wound not the assailant but another innocent bystander, as studies have repeatedly shown.

That is the society the gun lobby is working toward. Is it the one Americans want?

President Trump said just the right thing after the attack on Wednesday: "We may have our differences, but we do well in times like these to remember that everyone who serves in our nation's capital is here because, above all, they love our country. We can all agree that we are blessed to be Americans, that our children deserve to grow up in a nation of safety and peace."

Yet he will not help create that nation if he continues to advocate easy access to lethal weapons.

Daughters Will Suffer From Medicaid Cuts

Nearly one in five adult children at some point in their

that is more than double the total cost

LETTERS

The Attack on G.O.P. Lawmakers

TO THE EDITOR:

On Wednesday morning there was shooting at a baseball field filled with Republican members of Congress practicing for a charity game. Only the diligence of their police protectors prevented a mass killing. The gunman has been identified as a political extremist who was ardently anti-Trump and opposed to Republican tax policies. Has it really come to this? Has the extreme animus and disrespect between Republicans and Democrats finally morphed into potentially life-taking violent out-

persuade Congress to tighten up on gun laws, what kind of a crime would he? We've already seen the horrors of Aurora, Newtown, Columbine and Virginia Tech. President Trump went from advocating a ban on assault rifles to being a National Rifle Association parrot, and now talks as if he really believes that the trouble with America is too few guns, not too many.

RON GERRACHE, TORONTO

TO THE EDITOR:

I am as disturbed as anyone by the

rash and often reckless leadership of President Trump, and what he means to our delicate democracy. But may be now, in the wake of this apparently politically motivated shooting, the ceaseless drumbeat by Trump critics over the supposed coming fascism in America,

along with celebrations of the rambo-like, false-seized heads held up by comedians' theater companies acting out bloody executions, can be toned down a bit.

And this applies especially to the American media, which were rightly appalled when Mr. Trump called them the "enemy of the people," but have, for months now, presented him in exactly that same way. Is it any wonder folks are bursting at the seams out there?

Now is the perfect moment for a reboot. My hope is that Mr. Trump will finally lay off his Twitter feed and start acting presidential. But even if he does not, we must all bear in mind that the best way to oppose him and his policies is to

oppose the man who partly disfigures the man who partly disfigures is through the constitutional and electoral freedoms that remain very much alive and well, even in Mr. Trump's America.

STUART COFFILL, NEW YORK
The writer, a former senior adviser to Mr. Trump, teaches public policy at Columbia.

get shot.

If this isn't enough of a crime to

Sarah Palin

-v-

17-cv-4853 (JSR)

**The New York Times Co. & James
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PRELIMINARY INSTRUCTION

To the jury:

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Conservatives and right-wing media were quick on Wednesday to demand forceful condemnation of hate speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask for the right."

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such link was established. The editorial also incorrectly described a map distributed by a political action committee before that shooting. It depicted electoral districts, not individual Democratic lawmakers, beneath stylized cross hairs."

~~If you were to find that the admittedly incorrect statements made in the two editorial paragraphs quoted above amounted in effect to an assertion that the cross hairs map issued by Sarah Palin's political action committee clearly and directly incited the Loughner shooting, and if you were to further find that such an assertion was at least in part an assertion concerning the activity of Sarah Palin personally — all matters that the parties dispute — then the challenged statements in the editorial must be considered defamatory in the sense of exposing Ms. Palin to public contempt, aversion, ridicule or disgrace.~~

The assertion that there was a "direct" and "clear" "link" between the crosshairs map and the Loughner shooting is defamatory as a matter of law, but you will still have to decide whether the assertion is false and reasonably understood to refer to Ms. Palin personally.

In addition, ~~however,~~ Ms. Palin, ~~to establish her libel claim,~~ would needs to prove certain other elements of her claim, such as what the law calls "actual malice." To prove this essential element of her claim, Ms. Palin would have to show that it was highly probable that at the time he drafted the relevant parts of the editorial, Mr. Bennet actually knew that the complained-of assertion was false or knew that there was a high risk that the assertion was false but intentionally chose to disregard that risk.

The issues outlined above are not the only disputed issues in this case; but they are issues that are likely to be subject of much of the evidence and argument that you are about to hear, and that is why I wanted to focus your attention on it from the outset. But please remember that this Preliminary Instruction is simply a brief and partial overview. At the start of your deliberations, I will give you more complete and detailed instructions that will replace this overview and will govern your deliberations.

Judge Rakoff

Commented [A1]: This language ("amounted in effect to an assertion ...") asks the jury to determine the meaning of the challenged statements in violation of *Palin II*, 113 F.4th 245, 276-277 (2d Cir. 2024) ("The challenged statements are unambiguous and facially defamatory because they claimed there was a 'direct' and 'clear' 'link' between the crosshairs map and the Loughner shooting.") and constitutes fundamental error *Id.* at 277 ("Such an erroneous instruction requires a new trial unless the error is harmless" (citations and quotations omitted)).

Commented [A2]: This language tracks *Palin II*, 1q143 F.4th at 276-77.

Exhibit A

A22

THURSDAY, JUNE 15, 2017

V

Opinion

The New York Times

America's Lethal Politics

America's elected representatives enjoying America's pastime on a ball field just across the Potomac from the Capitol. A particularly American form of terror changed that idyllic early Wednesday morning into what Senator Rand Paul, who was there, called "basically a killing field."

A gunman with a rifle fired dozens of rounds at members of Congress and current and former aides, who do not have the same protection as the president. The gunman, a Republican from Michigan, who was at home plate when the gunman appeared. In all, five victims were hit, including Representative Steve Scalise of Louisiana, the House majority whip, who was in critical condition Wednesday night after surgery on a bullet

Askinging

wound to his hip. An American would once have been horrified and shocked by such savagery. Members of Congress would be first in line to be killed. That was one of two mass shootings in the United States on Wednesday. At a San

Francisco UPS facility, a gunman killed three people and himself.

Not all the details are known yet about what happened in the Capitol. The suspect, James Hodgkinson, who was killed by Capitol Police officers, was such a deranged and his derangement had found its final in politics. Mr. Hodgkinson was a Bernie Sanders supporter and campaign volunteer who violently opposed to President Trump. He posted many anti-Trump messages on social media, including one in March that said "Time to Destroy Trump & Co."

As this attack unfolded, how vicious American politics has become, how much more deadly and more open fire in a supermarket parking lot, grievously wounding Representative Gabby Giffords and killing six people, including a 5-year-old girl, the link to political incitement was clear. Before the shooting, Sarah Palin's political action committee circulated a map of targeted electoral districts that put Ms. Giffords and 19 other Democrats under stylized cross hairs.

Conspiracy news and right-wing media were quick on Wednesday to demand firefist condemnation of the

speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask of the right.

Was this attack evidence of how readily available guns and ammunition are in the United States? Indisputably. Mr. Hodgkinson, by definition, should not have had a gun, but he was licensed in his home state, Illinois. And in any event, if he had been caught with a loaded weapon in a gun store, in which he had been spotted, he would have been arrested. He would have been charged with possession of a firearm without a license, a crime for which he would have received a prison sentence on open carry.

The reaction of some was that the only solution is yet

more guns. Representative Mo Brooks of Alabama, who was among those who came under fire on Wednesday, said, "It's not easy to take when you see people around you being shot and you don't have a weapon yourself."

That's an entirely reasonable reflex. All people in that situation, unarmed and under fire, would long to be able to protect themselves and their friends. Yet consider the society Americans would have to live in — the choices they would all have to make — to enable that kind of defense. Every member of Congress, and every other American of whatever age, would have to go to baseball practice, or to school, or to work, or to the post office, or to the health clinic — or to any of the other places mass shootings now take place — with a gun on their hip. And then, when an attack came and they returned fire, they would probably kill or wound innocent bystanders, as studies have repeatedly shown.

That is the society the gun lobby is working toward. Is it the one Americans want?

President Trump said just the right thing after the attack on Wednesday: "We may have our differences, but we do well in times like these to remember that everyone who serves in our nation's capital is here because, above all, they love our country. We can all agree that we are blessed to be Americans, that our children deserve to grow up in a nation of safety and peace."

Yet if he will not help create that nation if he continues to advocate easy access to lethal weapons.

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LEADERS

The Attack on G.O.P. Lawmakers

TO THE EDITOR:

On Wednesday morning there was a shooting at a baseball field filled with Republican members of Congress. The gunman, a Republican from Michigan, who was at home plate when the gunman appeared. In all, five victims were hit, including Representative Steve Scalise of Louisiana, the House majority whip, who was in critical condition Wednesday night after surgery on a bullet

RON CHABACH, THURSDAY

TO THE EDITOR:

Democrats finally morphed into potentially full-blown violent out-

burst? Does this event portend a sad and dangerous devolving of our society into a state of lawlessness? But maybe now, in the wake of this apparently politically motivated shooting, the caseless dunderbushes are more than ever posed coming fascism in America.

Along with celebrations of the minute (like several heads held high), there should be some serious reflection on the situation. The situation can be toned down a bit.

And the apoplexy, especially to the right, is not a new phenomenon. A rightist apoplexy when Mr. Trump called them the "enemy of the people" but have, for months now, presented him in exactly that same light. The situation is not bursting at the seams out there?

Now is the perfect moment for a rebuttal. My hope is that Mr. Trump will finally be off his Twitter feed and back to work. He can't afford to even if he does not, we must all bear in mind that the best way to oppose politicians and policies with which we disagree is through the constitutional and electoral process that remain very much alive and well, even in Mr. Trump's America.

STUART GUTTLER, NEW YORK
The attack on a former senior adviser in the Senate, teacher, public policy at Columbia.

Stuart Guttler, New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SARAH PALIN, an individual,

Plaintiff,

– against –

THE NEW YORK TIMES COMPANY,
a New York corporation,

Defendant.

No. 17 Civ. 4853

Hon. Jed S. Rakoff

ECF Case

OBJECTION TO APRIL 14, 2025 5:50 PM PRELIMINARY INSTRUCTION

Plaintiff, Sarah Palin, objects to the Court’s draft Preliminary Instruction as of April 14, 2025 emailed to counsel (the “Preliminary Instruction”) and states as follows:

The following portion of the Court’s Preliminary Instruction directly violates the mandate and would amount to fundamental error if given: “[i]f you were to find that the admittedly incorrect statement made in the two editorial paragraphs quoted above **amounted in effect to an assertion** that the cross hairs map issued by Sarah Palin’s political action committee clearly and directly incited the Loughner shooting . . . then the challenged statements in the editorial must be considered defamatory in the sense of exposing Ms. Palin to public contempt, aversion, ridicule or disgrace” (emphasis added).

The jury cannot be instructed to decide the meaning of the challenged statements (i.e., whether the challenged statements “amounted in effect to an assertion”) because the Second Circuit already held as a matter of law that these statements unambiguously “claimed there was a ‘direct’ and ‘clear’ ‘link’ between the crosshairs map and the

Loughner shooting,” and therefore, are defamatory. *Palin v. New York Times Co.*, 113 F.4th 245, 268 and 276-277 (2d Cir. 2024). Moreover, the Second Circuit held that this is “not a case in which the challenged statement was susceptible to both ‘defamatory and nondefamatory meanings.’” *Id.* at 277 (quoting *Kendall v. Daily News Publ’g Co.*, 716 F.3d 82, 90 (3d Cir. 2013)). The mandate must be followed. *See Yick Man Mui v. United States*, 614 F.3d 50, 53 (2d Cir. 2010) (citations and quotations omitted). Instructing the jury that they will decide whether the challenged statements amounted “to an assertion that the cross hairs map issued by Sarah Palin’s political action committee clearly and directly incited the Loughner shooting,” would also amount to fundamental error. *Palin*, 113 F.4th at 277.

To the extent the Court’s proposed language in the above-referenced portion of the Preliminary Instruction was aimed at addressing the falsity and “of and concerning” elements of Plaintiff’s libel claim within the context of also instructing the jury that the challenged statements have been determined as a matter of law to be defamatory *per se*, Plaintiff has proposed a revised version of the Preliminary Instruction (attached hereto as Exhibit A) that addresses these elements while still adhering *Palin II*’s mandate.

Dated: April 14, 2025

/s/ Shane B. Vogt

Kenneth G. Turkel (admitted *pro hac vice*)

Email: kturkel@tcb-law.com

Shane B. Vogt (admitted *pro hac vice*)

Email: svogt@tcb-law.com

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& PESKOE LLP
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New York, NY 10017
Telephone: (212) 907-7300
Facsimile: (212) 754-0330

Attorneys for Plaintiff

EXHIBIT A

Sarah Palin

-v-

17-cv-4853 (JSR)

**The New York Times Co. & James
Bennet**

PRELIMINARY INSTRUCTION

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Conservatives and right-wing media were quick on Wednesday to demand forceful condemnation of hate speech and crimes by anti-Trump liberals. They're right. Though there's no sign of incitement as direct as in the Giffords attack, liberals should of course hold themselves to the same standard of decency that they ask for the right."

Co-defendant Bennet was principally responsible for the words in these paragraphs that Ms. Palin claims libeled her.

Around 11:15 a.m. on June 15, 2017, the *Times* published a revised digital version of the editorial and added a correction to the end of it that read:

"Correction: June 15, 2017

An earlier version of this editorial incorrectly stated that a link existed between political incitement and the 2011 shooting of Representative Gabby Giffords. In fact, no such link was established."

Later, on June 16, 2017, the *Times* also published a correction at the bottom of the Editorial Page in the printed edition that read:

"CORRECTION

An editorial on Thursday about the shooting of Representative Steve Scalise incorrectly stated that a link existed between political rhetoric and the 2011 shooting of Representative Gabby Giffords. In fact, no

such link was established. The editorial also incorrectly described a map distributed by a political action committee before that shooting. It depicted electoral districts, not individual Democratic lawmakers, beneath stylized cross hairs."

~~If you were to find that the admittedly incorrect statements made in the two editorial paragraphs quoted above amounted in effect to an assertion that the cross hairs map issued by Sarah Palin's political action committee clearly and directly incited the Loughner shooting, and if you were to further find that such an assertion was at least in part an assertion concerning the activity of Sarah Palin personally — all matters that the parties dispute — then the challenged statements in the editorial must be considered defamatory in the sense of exposing Ms. Palin to public contempt, aversion, ridicule or disgrace.~~

The assertion that there was a "direct" and "clear" "link" between the crosshairs map and the Loughner shooting is defamatory as a matter of law, but you will still have to decide whether the assertion is false and reasonably understood to refer to Ms. Palin personally.

In addition, ~~however,~~ Ms. Palin, ~~to establish her libel claim,~~ would needs to prove certain other elements of her claim, such as what the law calls "actual malice." To prove this essential element of her claim, Ms. Palin would have to show that it was highly probable that at the time he drafted the relevant parts of the editorial, Mr. Bennet actually knew that the complained-of assertion was false or knew that there was a high risk that the assertion was false but intentionally chose to disregard that risk.

The issues outlined above are not the only disputed issues in this case; but they are issues that are likely to be subject of much of the evidence and argument that you are about to hear, and that is why I wanted to focus your attention on it from the outset. But please remember that this Preliminary Instruction is simply a brief and partial overview. At the start of your deliberations, I will give you more complete and detailed instructions that will replace this overview and will govern your deliberations.

Judge Rakoff

Commented [A1]: This language ("amounted in effect to an assertion ...") asks the jury to determine the meaning of the challenged statements in violation of *Palin II*, 113 F.4th 245, 276-277 (2d Cir. 2024) ("The challenged statements are unambiguous and facially defamatory because they claimed there was a 'direct' and 'clear' 'link' between the crosshairs map and the Loughner shooting.") and constitutes fundamental error *Id.* at 277 ("Such an erroneous instruction requires a new trial unless the error is harmless" (citations and quotations omitted)).

Commented [A2]: This language tracks *Palin II*, 1q143 F.4th at 276-77.

Exhibit A

